

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 4486 OF 2006
IN
SUIT NO. 2735 OF 2006

M/s.Housing Development Finance .. Plaintiff.
Corporation Ltd.,

V/s.

Mr.Wanve Mhatardeo Kemji & Ors. .. Defendants.

Ms.Nipa Singh i/by M/s. Mahesh Menon & Co. for the
Plaintiff.

CORAM : S. A. BOBDE, J.

DATED : 23rd JANUARY, 2007.

P.C.:

. The learned counsel for the Plaintiff has tendered an affidavit of service, which discloses that attempts to serve the defendants are failed because the packets were returned with an endorsement that the person was not there at the delivery time. The counsel for the plaintiff, however, submits that the defendants had been served in the earlier Notice of Motion No. 3636 of 2006 but they did not appear at that stage also. In that motion; on 18th October, 2006 this court passed an ad-interim order in terms of prayers (a) and (c), except the words bracketed in red with the direction to the court receiver to appoint defendant No.1 as his

agent on usual terms and conditions except as to security.

2. Apparently, when the Court Receiver went to the suit flat for executing the said order of this court, the flat was locked and therefore, possession could not be taken. The plaintiff, which is a Housing Finance Company and has given a loan to the defendants, now seeks an order of this court to take forcible possession of the suit flat by breaking open the lock, if necessary, with the help of the local police.

3. Having regard to the circumstances of the case and looking to the conduct of the defendants it is appropriate to allow this notice of motion in terms of prayer clause (a), which reads as follows :

(a) that pending the final hearing and disposal of the Suit, this Hon'ble Court be pleased to modify its order dated 18th October, 2006, thereby allowing the Court Receiver, High Court, Mumbai to take physical possession and /or forcible physical possession by breaking open the lock and /or in possession of some third party/tenant/trespasser in the suit premises being viz., Flat No.307, 3rd Floor,

Prabha Park, Building No.1, Wing E, Gut No.39P,
B Cabin Road, Morivili Bombay-Pune Highway,
Ambernath (E), Thane, with or without the help
of local police personal/station in whose
jurisdiction the suit premises is situated and
make inventory of and attach all articles lying
and being in the suit premises and take
necessary steps required to protect the suit
premises;

4. Order accordingly. Motion stands disposed of.

(S.A.BOBDE, J.)

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